

that Section 624A(c) (2) (C) says must be available from retail vendors.

Cable operators cannot have it both ways. If their joint recommendations with the consumer electronics industry do **not** entail divorcing security from competitive features, then they must live with the stagnating consequences of the interface they have committed to support. If they **do** entail divorcing security and competitive features, cable operators should be arguing **for**, rather than against, (1) standards, (2) a security/competitive interface, and (3) more specifically, a National Renewable Security System implementation of the decoder interface. With such an implementation, **everyone** can participate in the "Brave New TV"<sup>24/</sup> that would cause cable operators to abandon the interface they have only just negotiated.

### III. THE COALITION SUPPORTS COMMENTS FAVORING A NATIONAL RENEWABLE SECURITY STANDARD (NRSS).

Mitsubishi's Comments quote from a document prepared by a subcommittee of the CAG's **own Joint Engineering Committee**, explaining how security features can be compatibly isolated **on a software carrier only:**

On January 11, the NRSS co-chairman presented the concept of a Conditional Access card. This card can provide security for digital consumer electronics. This card isolates all security elements into one removable medium, is inexpensive and uses an existing form factor. It will allow all types of digital consumer electronics to be

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<sup>24/</sup> See id. at 20 n.34.

developed independent of the conditional access system. This card meets all of the system attributes required by the committee.<sup>25/</sup>

Our discussion in Part II above illustrates the seriousness of this issue. The GI and TCI filings show that, with the best of intentions, it will simply not be possible to achieve the goals of Section 17 of the Cable Act in general, and Section 624A(c)(2)(C) in particular, so long as cable operators are able to (1) tie security features to competitive features, and (2) provide the hardware that implements both.

As we argued in Parts I & II, it is possible to segregate security and competitive features yet still allow cable operators to provide the security hardware. This would be vastly better than the alternative -- killing any market for competitive feature devices. But the passage quoted above shows that there is an even better way, a standard which (similar to that achieved in our telephone system) would not require **any** exclusive hardware device to be furnished by any particular operator.

The cable industry deserves credit for its participation in joint engineering subcommittee which developed the recommendation quoted above, and presented it to the full Joint Engineering Committee. Given the capability and good faith shown by this joint effort, this

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<sup>25/</sup> Mitsubishi Comments at 12.

is an opportunity that the Commission cannot afford to ignore.

Representative Markey observed at his February 1, 1994 hearing<sup>26/</sup> that, as the National Information Infrastructure takes shape, we face a choice of alternative models for the "set-top" devices that will be the "on-ramps" and "off-ramps" to the so-called information superhighway. Will we follow the telephone model, where providing all customer-premises devices was successfully opened to full competition, or the cable model, where each device has a single maker and a single marketer?

The Commission should require the cable-consumer electronics Joint Engineering Committee to develop the NRSS as the specific implementation of the "Decoder Interface" to which the Commission is committed. Doing so will provide the only long-term answer to Rep. Markey's question. In addition to complying with Section 624A(c)(2)(C), it will also afford consumers compatibility equal to that of in-the-clear signals -- a goal that the Commission, in its Notice, has tried to encourage by less direct means.

IV. DISINCENTIVES SHOULD NOT BE POSED FOR CABLE OPERATORS TO PROVIDE IN-THE-CLEAR SIGNAL DELIVERY.

The Coalition supports the Comments of Multichannel Communication Sciences, Inc. ("MCSI"), urging that separate charges be allowed for devices that provide multichannel

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<sup>26/</sup> See supra note 3.

descrambling outside the home so as to deliver all authorized channels "in the clear."<sup>27/</sup> In earlier phases of this proceeding, several commenters argued that, because in-the-clear signals save consumers money by eliminating in-home complexity and redundancy, the Commission should provide an **incentive** for the use of such techniques.<sup>28/</sup> The Coalition endorses this view, and, at the very least, supports the MCSI argument that the Commission should not pose a rate **disincentive** for a technique it so clearly wishes to encourage.

The status of in-the-clear techniques is another area as to which some in the cable industry would have things two ways. On the one hand, in a congressional hearing, in answer to Representative Markey's question about following the "telephone" or the "cable" models of compatibility, an industry representative said that if addressable converter boxes were (also) located "outside on the telephone pole," no one would be raising compatibility complaints.<sup>29/</sup> Yet, faced with proposals actually to allow such devices to function so that they **can** operate similarly to the telephone system, the same commenter and others argue against them.

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<sup>27/</sup> Comments of Multichannel Communication Sciences, Inc., ET Docket 93-7, at 14-15 (Jan. 26, 1994).

<sup>28/</sup> See, e.g., Reply Comments of the Home Recording Rights Coalition, ET Dkt. No. 93-7 (Apr. 21, 1993) at 10-11 & n.16; Reply Comments of Matsushita Electric Corporation of America, ET Dkt. No. 93-7 (Apr. 21, 1993), at 14.

<sup>29/</sup> See supra note 3, oral testimony of Mr. Krisbergh for GI.

They assert that multichannel, point-of-entry techniques that descramble outside the home are vulnerable for security reasons and should not be favored by the Commission.<sup>30/</sup>

As retailers we favor competition. If cable operators can provide multichannel hardware that provides in-the-clear signals compatible with network features, they should have an incentive to do so. We will then sell the in-home devices that offer the competitive features.<sup>31/</sup>

Even if all goes precisely as we would hope, and future generations of equipment are provided on competitive and compatible bases, the existing TVs and VCRs will be in use for decades to come. The compatibility advantages for consumers owning such TV and VCRs, if multichannel techniques are used, are huge compared to the band-aids otherwise being required by the Commission in this proceeding. For this reason alone, the Commission should provide incentives, rather than disincentives, for the use of such techniques.

V. REQUIREMENTS FOR "CABLE READY" TVS AND VCRS SHOULD NOT APPLY TO DEVICES NOT MARKETED OR LABELED AS "CABLE-READY."

Retailers appreciate the importance of consumer choice, and of being able to offer consumers precisely what they

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<sup>30/</sup> See, e.g., GI Comments at 54 and citations therein; TCI Comments at 30.

<sup>31/</sup> Cable operators should not be able to bundle competitive features into multi-channel devices, either.

need. It is suicide to offer **only** the most expensive products when less expensive versions suit their needs. Yet this is what some commenters are urging the Commission to do.

Language used in the Notice could be interpreted to require that all TVs and VCRs, rather than only those marketed as "cable ready," must meet the specifications required of "cable ready" TVs and VCRs. As the Comments of the CAG point out, however, such a requirement would be beyond the authority granted in the Cable Act, which would control the design of TVs and VCRs only to the extent necessary to enforce a definition of "cable ready."

The cable industry, as represented by the NCTA, agreed in the original joint recommendations that the design improvements necessary to implement the decoder interface should be limited to TVs and VCRs labeled "cable ready." In the CAG Comments, the cable industry has honored this commitment. The contrary comments of several cable operators are another example of trying to have things two ways. They **don't** want to commit **new** services to the interface, even though that is what was clearly and jointly intended. Yet they **do** want to impose the interface, and the new tuner requirements, on TVs and VCRs, for which they were clearly, and jointly, not intended.

As retailers, we are aware, and bear much of the expense, of problems encountered when consumers choose

goods not suitable for the intended use. Restricting consumer choice, however, is not the answer. There will be a market for a very long time for TVs and VCRs with existing tuner and interface capabilities. We understand from the record in this proceeding that forcing all sets to include every required "cable ready" feature would make them significantly more expensive for our customers. We believe that the consumer education programs described in the Notice and supported by the CAG are adequate; there is no reason to make so many products so much more expensive for so many customers.

#### CONCLUSION

The Coalition believes that the Commission, and most of the parties to this proceeding, are making earnest and good faith efforts to comply with a challenging congressional mandate. Advances in technology offer opportunities to do what Congress clearly intended, and give consumers a choice as to the equipment to put in their home, and the features they will use.

The comments on the Commission's Notice illustrate what is at stake. Everyone sees new powers, features, and capabilities built into the "converter box" of the future. Some in the cable industry want to control the hardware implementation of these features. They interpose reasons why they can neither be built into future TVs, VCRs and


computers, nor offered competitively as stand-alone devices, new generation converter boxes.

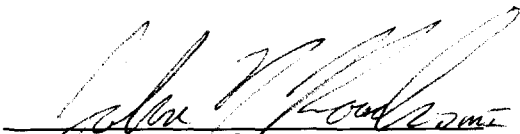
The excuses won't wash. The law requires that the new converter boxes be available competitively, from independent retail vendors. The technology to ensure this is at hand. The relevant standards are being written by private sector committees and advisory groups now. All that is needed is more specific and affirmative guidance from the Commission.

Respectfully submitted,

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